



RUSSIA'S ACCESSION TO THE WORLD TRADE ORGANIZATION: CHALLENGES AND OPPORTUNITIES FOR RUSSIAN COMPANIES

On August 22, 2012, after 19 years of negotiations, the Russian Federation ("Russia") became the 156th member of the World Trade Organization. This event marks the accession of the last major world economy to the international trading regime.

Proponents, opponents, academics, and businesspeople from within and outside Russia have commented extensively on Russia's accession. There have been many studies, opinions, assessments, and projections about the consequences of accession on Russia's economy and the economy of other WTO members in the short and long term. There have also been diverging views on the immediate impact of WTO membership on Russia and other WTO members. It has been suggested that it will benefit some Russian industry sectors and disadvantage others.

Only time will tell what the exact consequences of the WTO accession will be for the Russian economy.

However, it is clear that the regulatory framework within which Russian companies operate in export markets and the regulatory framework governing competition from foreign companies on the Russian domestic market will undergo significant changes. The impact of Russia's accession to the World Trade Organization will largely depend on how Russian companies take advantage of this regulatory framework. The new reality will provide Russian businesses with great opportunities and confront them with great challenges. Whether and how they will reap the benefits of accessing the multilateral trading system will depend to a large extent on whether or not they choose to seize these opportunities and will be willing to face and overcome challenges. The decisions they make in this respect now may strongly affect their future position vis-à-vis their domestic and international competitors.

THE NEW REGULATORY FRAMEWORK

By joining the WTO, Russia has committed to abide by its rules and principles in accordance with its Protocol of Accession and specific Schedules of Commitments. These rules apply on a reciprocal basis, and other WTO members also have to observe them in their dealings with Russia. Moreover, the WTO Dispute Settlement Body will allow Russia to hold its WTO partners accountable for failing to adhere to these rules. Conversely, other WTO members will use this system to ensure Russia's compliance. The dispute settlement mechanism enforces the obligations agreed upon within the WTO and aims to give all WTO members confidence that the agreements negotiated and agreed upon will be enforced.

The basic rules and principles of the multilateral trading regime strongly favor tariff measures over non-tariff measures. These rules prohibit the use of so-called quantitative restrictions (with some exceptions), and trade protection through import tariffs is allowed. However, WTO members commit not to raise tariffs above levels agreed at the time of their accession.

A WTO member may not discriminate among its trading partners that are also WTO members and is required to give them equal "most-favored-nation" or MFN status. This principle provides for nondiscriminatory treatment of imports of goods and services. It also contemplates that the same tariffs will be applied to all WTO members. WTO members may not discriminate between their own and foreign products, services, or nationals, and they are required to grant them "national treatment." Consequently, imported and locally produced goods should be treated equally, at least after imported goods enter the market. This principle also applies to taxation.

The WTO imposes rules governing the imposition of anti-dumping, anti-subsidy, and safeguard measures, or so-called "trade defense measures" that can temporarily increase the duties in force on imports of particular products from particular countries. The use of health and sanitary measures and technical standards is also strictly regulated.

The WTO rules go beyond trading and affect customs, licensing, and certification rules and procedures; the protection of intellectual property; and government procurement.

CHALLENGES AND OPPORTUNITIES FOR RUSSIAN COMPANIES FOCUSED ON THE RUSSIAN DOMESTIC MARKET

Russian companies are likely to be confronted with stronger competition from non-Russian companies on their domestic market. Russia's WTO accession will result in increased access to the Russian market for international companies since accession will require Russia to lower its import tariffs and to rationalize its tariff system.

The exact changes will vary significantly depending on the sector concerned. For some sectors, the most important change might not be the reduction in tariffs as such but, rather, the fact that the tariff rates will be fixed, whereas in the past tariff changes were often used as a mechanism for shielding the Russian domestic industry from unwanted competition.

The market access is, however, not free from limitations. There are still legitimate ways to protect certain sectors and industries, and there are still WTO-compliant ways for the Russian government to support its domestic industries without violating WTO rules. To take advantage of some of these possibilities, the Russian companies will have to take initiative. For example, an anti-dumping or anti-subsidy investigation that can lead to the imposition of import duties may be initiated at the request of domestic industry players.

The Russian government is likely to maintain certain sectoral protection mechanisms, which may be challenged by other WTO members at the request of their exporting companies. Russian companies will have to support their government in demonstrating the WTO compliance of such mechanisms. In certain cases, changes in the wording of the relevant regulations may be sufficient to achieve compliance.

This new challenging environment will also create opportunities for Russian companies. Russian companies that analyze the new regulatory framework and its consequences on their business will more easily adapt to the new reality and will have an important competitive advantage.

CHALLENGES AND OPPORTUNITIES FOR RUSSIAN EXPORT-ORIENTED BUSINESSES

Russia's WTO accession provides Russian companies with increased access to export markets. Tariffs have to be lowered, and existing trade restrictions (including quotas) on certain products will disappear. WTO membership ensures Russia with nondiscriminatory treatment of its exporters in the markets of other WTO members. Russian exporters that feel discriminated in favor of other exporters or domestic companies can, under certain circumstances, enforce their rights under the WTO Agreements. Since Russian exporters already had access to most of the tariff benefits through Russia's bilateral trade agreements with WTO members, the reduction and/or elimination of nontariff barriers is likely to account for most of the benefits for the Russian economy through liberalization rather than the decrease in tariffs.

The entry into the WTO also provides Russian exporters with equal status with other WTO members in anti-dumping, anti-subsidy, and/or safeguard procedures and should put an end to discriminatory measures against Russian exporters. Russian exporters that are being confronted with trade defense measures may seek the initiation of an investigation by the authorities of the importing WTO member, in which these measures are reviewed, in accordance with the WTO rules.

The biggest challenge for Russian exporters is likely to be ensuring compliance with these and other rules and principles of the world trading regime. The extent to which

Russia's exporters will benefit from accession to the WTO in practice remains to be seen. It will be of utmost importance for Russian industries to monitor compliance by other countries and to properly address any violations.

JONES DAY AND ITS EXPERIENCE IN WTO/ INTERNATIONAL TRADE LAW

Jones Day's international trade lawyers are highly experienced in EU and WTO trade law, including trade defense (anti-dumping, anti-subsidy, anti-circumvention) and a full range of other trade matters. They have assisted companies and governments in highly challenging trade-related matters. Their well-recognized knowledge will benefit many of the Firm's Russian clients that require assistance in this area.

Jones Day's experience and capabilities in Russia, combined with its experience in international trade law, positions it to assist Russian companies in dealing with the challenges and opportunities in the new regulatory environment emerging from Russia's accession to the WTO.

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